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In The

Supreme Court of the United States

October Term, 1992

COLUMBIA GORGE UNITED – PROTECTING PEOPLE AND PROPERTY,

Petitioner,

v.

EDWARD G. MADIGAN, Secretary of Agriculture of the United States; and the COLUMBIA RIVER GORGE COMMISSION,

Respondents.

and

FRIENDS OF COLUMBIA RIVER GORGE,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The Ninth Circuit Court Of Appeals

BRIEF OF *AMICI CURIAE* OF THE AMERICAN SHEEP INDUSTRY ASSOCIATION, THE MAINE CONSERVATION RIGHTS INSTITUTE, MOUNTAIN STATES LEGAL FOUNDATION, AND THE NATIONAL INHOLDERS ASSOCIATION IN SUPPORT OF PETITIONER

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Mountain States Legal Foundation (MSLF) respectfully submits this brief *amici curiae* in support of the

Columbia Gorge United – Protecting People and Property, Petitioner for *Certiorari*.[1]

INTERESTS OF *AMICI CURIAE*

The American Sheep Industry Association (ASI) is a federation of 49 member states and is the national voice of the 110,000 sheep producers in the United States. The ASI was created in 1989 through the merger of the National Wool Growers Association and the American Sheep Producers Council. The history of these predecessor organizations extends back over 120 years and represents the oldest livestock commodity group in the United States. The purpose of the ASI is to promote the general welfare of the sheep industry.

The ASI is greatly concerned with these issues because members of its Oregon and Washington state associations are directly impacted by the Columbia River Gorge National Scenic Area Act and the ASI is greatly concerned about the implications for protection of private property rights nationwide.

The Maine Conservation Rights Institute (MECRI) is a non-profit, public interest research and education institution founded in 1990. MECRI has 400 contributing members who are greatly concerned that 26 million acres

[1] *Amici* has obtained the written consent of the parties. Their written consent has been provided to the Clerk of the Court under separate cover.

of mostly private land in Maine, New Hampshire, Vermont, and New York could soon become subject to federal land-use controls as a result of this case. MECRI encourages options for private conservation and wise use of the land, and is also an active private land trust.

Mountain States Legal Foundation (MSLF) is a nonprofit, membership public interest law foundation dedicated to bringing before the courts those issues vital to the defense and preservation of individual liberties, the right to own and use property, limited government and the free enterprise system. MSLF members include businesses and individuals who live and work in nearly every state of the country. A large number of the Foundation's members work in businesses involved in the utilization and development of natural resources and, as a result, are actively involved in many environmental issues.

The National Inholders Association (NIA) is a public interest and private property advocacy organization that protects the rights of people who own property, permits, leases, mining claims or other equity interest within federal and state managed lands or who are impacted by the management, regulation of, or access to, those areas. The NIA has 16,000 members throughout the 50 states.

STATEMENT OF THE CASE

Amici adopts the Petitioner's Statement of the Case.

SUMMARY OF THE ARGUMENT

In passing the Gorge Act, Congress usurped state democratic institutions and exceeded the commerce power. This overreaching by the national government is only one instance of a continuing trend toward centralized decision-making that threatens to destroy the federal structure of government in America.

REASONS FOR GRANTING THE WRIT

A. FOR CONSTITUTIONAL AND POLICY REASONS INDEPENDENT STATE DECISION-MAKING MUST BE PRESERVED

This Court's decision in the instant case will greatly influence the future of American government. The ruling will foretell either the gradual abandonment of federalism or a return to the separation of powers envisioned by the Constitution.

The nature of national-state relations has changed rapidly in the last few decades. The scheme known as "co-operative federalism" increasingly appears to be a device of national decision-making that endangers the federal structure of American government. States are rapidly becoming departments of the national government whose elected legislatures and executives must take orders from Congress and federal administrators. Today, one-quarter to one-third of an average state's budget is made up of federal funds. National Conference of State Legislators, State Legislative Oversight of Federal Funds: Preliminary Report and Suggested Activities 9 (1979).

If federalism is to remain viable, the judiciary must again act to delineate the boundaries of national and state powers. From this Nation's beginnings, until the New Deal era, the courts consistently recognized the importance of state sovereignty. *See, e.g., Coyle v. Smith*, 221 U.S. 559 (1911); *United States v. Butler*, 297 U.S. 1 (1936). "Indeed, the question whether the Constitution should permit Congress to employ state governments as regulatory agencies was a topic of lively debate among the Framers". *New York v. United States*, 60 U.S.L.W. 4603, 4608 (1992).

Although *New York* was a further step in establishing guidelines for preserving state autonomy, marking the reawakening of state sovereignty principles, it did not provide a clear test for determining when the federal government has overstepped the bounds of its enumerated powers. Such a clear test is absolutely necessary to insure a continuation of autonomous state decision-making.

1. National Decisions Disguised As State Decisions Obscure The Lines Of Political Accountability

The reality of "co-operative federalism" is that it creates numerous programs which are neither fully state programs nor fully national programs. Certain aspects of a program might have primarily state functions while some may have primarily national functions, but the bulk of co-operative programs are a confusing mix of authority and functions. The Columbia River Gorge National Scenic Area Act (Gorge Act), 16 U.S.C. §§ 544-544p, directly compels state and local legislation to be enacted in accordance with the requirements of the Gorge Act. 16

U.S.C. § 544f(f). Refusal to follow the demands of the Act or the Secretary of Agriculture's regulations results in a usurpation of the state's role by a federal program. 16 U.S.C. § 544f(k), (l), and (m).

This regulatory structure entirely distorts the lines of political accountability. Dissatisfied citizens in the Columbia River Gorge have no clear recourse. State governments cannot alter programs because they are subject to continuing national commands, and federal agencies cannot unilaterally alter the state programs. Change is consequently more difficult because neither governmental entity alone is able to amend or abolish an unsatisfactory program. Thus, a representative form of government, reliant upon citizen input, erodes into an unresponsive and confusing labyrinth that is far removed from the fundamental principles of our constitutional system. *See, Stromberg v. California*, 283 U.S. 359, 369 (1951); *United Mine Workers District 12 v. Illinois State Bar Association*, 389 U.S. 217 (1967).

2. State And Local Level Decision-making Allows More Citizen Input And More Consideration Of Local Factors

States long functioned as the governmental units most directly affecting the lives of individuals. As American life has become more complex and as population has increased, individual control over, and input into, the governing process has naturally decreased. However, this inevitable lessening of an individual's potential impact has been unduly accentuated by the increasing amount of federal regulation and by the centralization of decision-

making. Thus, it is not surprising that public participation in the electoral process has gradually declined as individual efforts to influence the government have become more futile.

Furthermore, the removal of decision-making from the hands of state-level legislators and administrators to those on the national level necessarily decreases the attention to local circumstances and local problems. An administrator who must plan for the entire country cannot easily tailor a plan to community needs.

3. State/National Separation Of Powers Is A Valuable Safeguard Against Dangerous Accumulations Of Power

The Constitution is an instrument carefully designed to protect individual freedom by pitting the branches of government against each other. *See, Buckley v. Valeo,* 424 U.S. 1, 120-123 (1976). The separation of powers between the national and state governments is as essential to the American structure of government as the separation between the three branches of the national government. *Gregory v. Ashcroft,* 501 U.S. ___, 111 S.Ct. 2395, 2400 (1991). The purpose behind both types of separation was the same: to protect against the tyranny that could arise from the accumulation of all powers in the same hands. The two-fold protection envisioned by the authors of the Constitution was explained by James Madison in The Federalist No. 51.

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments. Then the portion allotted to each is subdivided among distinct and separate departments.

"States are not mere political subdivisions of the United States. State governments are neither regional offices nor administrative agencies of the Federal Government." *New York*, 60 U.S.L.W. 4615 (1992). Hence a double security arises to ensure the rights of the people. The different governments can control each other, while at the same time each will control itself.

The reluctance with which power was given to the national government is illustrated by the Court's observation in *South Carolina v. United States*, 199 U.S. 437, 456 (1905):

> The opposition to the Constitution came not from an apprehension of danger from the extent of power reserved to the states, but, on the other hand, entirely through fear of what might result from the exercise of the powers granted to the central government.

The fact that Americans have become accustomed to a massive, centralized government does not diminish the wisdom of the early patriots' concern. During this Court's current opportunity to reevaluate federal principles, the words of Justice Frankfurter, concurring in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 594 (1952), may prove to be a valuable reminder:

> The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

4. States Serve An Important Role As Laboratories For Social And Environmental Experimentation

A crucial reason for preserving independent state decision-making is to encourage states to explore new

approaches to governmental problems. As noted by Justice Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (dissenting opinion):

> It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

Independent innovation is particularly necessary in the case of new government regulatory activities, such as environmental regulation, because state experimentation can hasten the development of successful regulatory techniques. Furthermore, because long-term impacts of environmental regulation may not be readily apparent, experimentation on a local level may avert major adverse effects at a broad level. The Gorge Act and its accompanying regulations contain numerous requirements that are highly technical and very detailed. Little latitude is provided for state flexibility, and state experimentation is discouraged. "While Congress has substantial powers to govern the Nation directly, including areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York*, 60 U.S.L.W. at 4608. In evaluating the constitutionality of the Gorge Act, the Court should consider the desirable public policy of allowing state innovation.

B. THE COLUMBIA GORGE ACT IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE TENTH AMENDMENT

Few dispute the proposition that "the Constitution created a Federal Government of limited powers,"

Gregory v. Ashcroft, 501 U.S. ___, 111 S.Ct. 2395, 2399 (1991). Yet, while the Tenth Amendment makes explicit that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" the task of ascertaining the constitutional line defining the scope of state autonomy has proven to be a difficult one. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States, if a power is an *attribute of state sovereignty* reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *New York*, 60 U.S.L.W. at 4606 (emphasis added). "The States do retain a *significant* measure of sovereign authority . . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government." *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 548 (1985) (emphasis added).

Even though an act of Congress may be within the scope of the Commerce Clause, Congress may not exercise this authority in a manner which impairs attributes of sovereignty attaching to every state government, particularly inherent governmental functions essential to the very separate and independent existence of the states to meaningfully serve as forums for democratic self-governance.

New York is but a part of the evolution of the "limits imposed by federalism," which evolution must take place "just as our understanding of Congress' power under the

Commerce Clause has evolved."[2] Anything short of such balanced evolution will eventually leave but a national constitution, as opposed to the "compoundly federal and national Constitution" as intended by the Framers.[3]

If the Commerce Clause has evolved to the extent of reaching local activities which affect commerce "even in the minutest degree,"[4] then Congress quite obviously can extend its powers into areas "never intended" or contemplated by the Framers of the Constitution[5] which is entirely contrary to implicit federalism concepts. The necessity for the concomitant evolution of the limits imposed by federalism on the Commerce Clause power as it affects the attributes of sovereignty of the states, is self-evident.

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[2] *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 421 n.2 (1978) (Burger, C.J., concurring). It may be that "experience" and not "logic" or even political philosophy is at the base of the evolution of Federalism principles. *California v. United States*, 438 U.S. 645, 646 (1978). The *New York* contribution to federalism's limits come in the summarical language of Justice O'Connor; "it makes no difference whether one views the question at issue in this case as one of ascertaining the limits of the power delegated to the Federal Government under the affirmative provisions of the Constitution or one of discerning the core of sovereignty retained by the States under the Tenth Amendment." 60 U.S.L.W. 4607 (1992).

[3] Diamond, *Commentaries on the Federalist*, 86 Yale L.J. 1273, 1282-83 (1977).

[4] *National League of Cities v. Usery*, 426 U.S. 833 (1976), overruled, *Garcia v. San Antonio*, 469 U.S. 528 (1985).

[5] *See, Perez v. United States*, 402 U.S. 146, 157 (1971) (Stewart, J., dissenting).

When writing the majority opinion in *Garcia*, Justice Blackmun rejected the tests employed by previous courts for discerning what constitutes the essential elements of state sovereignty. The error with each of these tests, Justice Blackmun noted, is that they inevitably invite an unelected federal judiciary to make decisions about which state policies it favors or dislikes. Rather than looking at governmental functions, the Court focused on *"principles of democratic self governance."* *Garcia* at 546 (emphasis added).

Federalism principles, implicit in the Constitution, demand an initial inquiry into democratic principles of self-governance *necessarily* performed by state and local governments. Land use planning and control is an essential attribute necessary to the separate and independent democratic state governments because: (1) it encompasses the process of evaluating, establishing and zoning wholly intrastate non-commercial state and private activity, as well as commercial activity, in order to effectuate the desired nature of and the quality of life in local communities (which is not the private business activity differentiated in *New York*); (2) it cannot be viewed in a single dimension as an exercise of the police power, rather, land-use planning is a hybrid governmental service by which states and local communities define and effectuate the nature and quality of their existence as well as governmental fiscal structure; (3) federalism principles involve concepts of local self determination and accountability essential to the determination of and quality of the existence for local communities and their people; (4) land-use planning and control is, in fact, the manifestation of a physical quality of a state because it is a state's

use of its lands, *i.e.*, an assertion of a state's quasi-real property interest in the land within its borders; and (5) the presumed local benefit-burden resulting from land use planning and control or the "average reciprocity of advantage" becomes nonexistent if exercised by the Federal Government under the Commerce Clause and would raise serious Fifth Amendment questions.

The Gorge Act, as erroneously justified by the Ninth Circuit Court of Appeals, attempts to view and define federal land use planning and control solely in terms of "national significance." However, land-use planning and control necessarily involves evaluating, establishing and zoning intrastate non-commercial state and private activity,[6] as well as commercial activity, in order to effectuate policies (which transcend economics) for the overall nature of and quality of life in local communities.

The essence ("experience") of land use planning and control transcends being characterized solely in terms of a power source. States and their local communities,

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[6] No Commerce Clause case has involved even remotely similar far-reaching impacts on intrastate private and state non-commercial activity as presented by direct federal land-use planning and control using a "national significance" standard. Many cite *Wickard v. Filburn*, 317 U.S. 111 (1942), as allowing the Commerce Clause power to reach the personal consumption of wheat. Such a view is a gross distortion. A person growing wheat in their backyard only for personal consumption, no part of which is to be sold in commerce, was not subject to the Agricultural Adjustment Act. However, federal land-use planning under the "national significance" standard would prohibit wholly intrastate private and state non-commercial activity, even though a state or local community would benefit from other uses, *i.e.*, the quality of life in and the nature of local communities.

through the means of land use planning and control, define and effectuate that intangible but recognizable quality of life within a given community, including whether it will provide "open space" and limit population density, *Agins v. City of Tiburon*, 447 U.S. 255 (1980); whether it will encourage industrial development, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); and whether it will seek to preserve historic and natural advantages, *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). These decisions are based upon such considerations as the location and availability of fire, water, and sewer services to a given area; potential depletion of local resources; availability of other suitable lands; meeting a community's growth demands; protecting the public health by appropriately zoning incompatible uses; providing recreational opportunities for its citizens, and providing a sufficient tax base to support local governmental services. "Accountability is thus diminished when due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate . . . . " *New York*, 60 U.S.L.W. at 4610.

Land-use planning and control is also integral to the local governmental financial structure and stability necessary to the delivery of certain essential governmental services. In fact, most of the school systems throughout the United States are financed directly by and their quality is dependent upon real and personal property tax revenues, *see, e.g., San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 10 (1973). Local communities utilize land-use planning concepts interrelated with property taxes to encourage or discourage various uses of property and to enhance the financial stability of the

governmental unit so as to be able to make and effectuate policy decisions in these governmental service areas.

Amici believe that the case at bar is of broad national legal significance for two very important reasons. First, the Columbia Gorge National Scenic Area is being promoted as one of a handful of "models" by single-interest groups, members of Congress and federal officials to be copied around the nation in an attempt to gain control over vast areas of private property. For example, the "Northern Forest Lands Study," produced by the United States Forest Service, recommends a Columbia Gorge Act-like umbrella strategy for preservation and control of 26 million acres of mostly private land in Maine, New Hampshire, Vermont, and New York. The study found these lands to be "nationally significant" for economics and recreation. S.C. Harper, L.A. Falk, and E.W. Rankin, *The Northern Forest Lands Study of New England and New York* at 1 (1990). The report was authorized by Congress in Pub. L. No. 100-446, 1988 U.S. Code Cong. & Admin. News at 102 Stat. 1774, and in reliance on a conference committee report, 134 Cong. Rec. at H6808 (Aug. 10. 1998). Thus, under the Ninth Circuit's interpretation of the Commerce Clause, this would render the entire 26 million acres susceptible to federal land use planning and control.

Second, the concept of designating areas as "nationally significant" as a justification for federal land-use controls is rampant throughout the federal land management agencies. A "national significance" standard is nothing more than a device designed to skirt the Constitution's provisions for a limited federal government and protection of individual liberties, all protections of little

value if Congress is free to convert clearly defined private rights into vast public rights. Liberty is nothing if it is to be subjected to such utilitarian calculations, or to the dictatorship of unconstrained majoritarianism. Under the Ninth Circuit's interpretation of the Commerce Clause, Congress would be free to set up "internal colonies" in which people will be disenfranchised from their state and local representative governments and stripped of their constitutional and civil rights.

This essence and "experience" of land use planning and control embodies elements of Federalism and local self determination and accountability. As recognized by this Court: "[z]oning laws and their provisions, long considered essential to effective urban planning are peculiarly within the province of the state and local legislative authorities." *Warth v. Seldin*, 422 U.S. 490, 508 n.18 (1975). These elements of self-determination and accountability have been emphasized by this Court since the early land use cases,[7] and are essential because of the very diverse culture, geography, geology and climate among the States which "have all but necessitated the recognition of legal

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[7] For more than 200 years, regulation of land use has been exercised exclusively by the states. *City of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Berman v. Parker*, 348 U.S. 26 (1954); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

The Gorge Act in effect thus raises a critical question as to whether Congress can effectively amend the Constitution, and accomplish a transfer of these historically held state powers to a federal agency in Washington, D.C., simply by making a legislative finding that an area encompassing mostly private land is "nationally significant."

distinctions corresponding to these differences," including principles of federalism. *California v. United States*, 438 U.S. 645, 648 (1978).

In fact, "[p]reservation of local control, naturally enough, involves protecting the integrity of state and local governments." *City of Rome v. United States*, 446 U.S. 156, 201 n.12 (1980) (Powell, J., dissenting). To remove the hybrid governmental service of land-use planning and control from those directly affected and concerned is to allow rule by those whose existence and destiny and, therefore, perspective is totally removed from the consequences without accountability to those affected.[8] It would cut to the core of federalism.

C. LAND IS NOT A COMMODITY READILY SUSCEPTIBLE TO UNIFORM NATIONWIDE PLANNING OR REGULATIONS

Land-use control and planning is, in fact, a state's use of its lands based on a quasi-property interest. Accordingly, the state's relationship to its lands has been

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[8] "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.' " *New York*, 60 U.S.L.W. 4613 (1992), quoting *Coleman v. Thompson*, 501 U.S. ___, 115 L.Ed.2d 640, 675, 111 S. Ct. ___ (1991) (Blackmun, J. dissenting).

afforded special treatment. *See, Kansas v. Colorado,* 206 U.S. 46, 93 (1907). For example, land within a state's boundaries is subject to public or state use in the form of a servitude by which the state can restrict the owner's right to use the property for the benefit of the state and its citizens without a "taking" necessarily occurring, in part because of the presumed local benefit-burden resulting from land use planning and control. *See, Keystone Bituminous Coal Assoc. v. De Benedictis,* 480 U.S. 470 (1987).

Equally as important in the balancing of land use planning and control within the constitutional framework and principles of Federalism is the Fifth Amendment protection afforded property rights which cannot be "taken for public use, without just compensation." Historically, Congress has expressly provided compensation mechanisms when it determines that private property must be taken for public use.[9] Because there is an average reciprocity of advantage, there may be situations when compensation is not required.

> "Any limitation so severe [as a confiscatory regulation] cannot be newly legislated or decreed (without compensation), but must inhere in the

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[9] For example, programs to acquire private lands to remain essentially in their natural state for the public benefit, be they wetlands, coastal areas, and other open spaces for parks, wildlife refuges, and the like. *See, e.g.,* Emergency Wetlands Resource Act of 1986, 16 U.S.C. §§ 3921-3923; The Recreation Use of Conservation Areas Act of 1962, as amended, 16 U.S.C. § 460 K-1; The Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 4601; The National Wildlife Refuge System Administration Act, 16 U.S.C. § 668 dd(3); The Migratory Bird Conservation Act, as amended, 16 U.S.C. § 715; Federal Land Policy and Management Act, 43 U.S.C. § 1748.

> title itself, in the restrictions that background principles of the *State's* law of property and nuisance already placed upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts – by adjacent landowners (or other uniquely affected persons) under the *State's* law of private nuisance, or by the *State* under its complimentary power to abate nuisances that affect the public generally or otherwise."

Lucas v. South Carolina Coastal Council, 60 U.S.L.W. 4842, 4849 (1992) (emphasis added).

This average reciprocity of advantage emphasizes the elements of self-determination and accountability within Federalism concepts. Allowing the federal government, under the Commerce Clause, to dictate land use control and planning concepts based on "substantial and adverse effects" upon commerce would either effectively remove or so dilute the local benefit to landowners and leave only the burden, as to impinge directly upon Fifth Amendment rights.[10]

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[10] *See, Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 416 (1922) (the question "at bottom" in a takings case is "upon whom the loss of the changes desired should fall.") *First English Evangelical Lutheran Church v. County of Los Angeles,* 482 U.S. 304, 318-19 (1987) (takings clause is " 'designed to bar Government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the public as a whole.' " (quoting *Armstrong v. United States,* 364 U.S. 40, 49 (1960)); *Nollan v. California Coastal Commission,* 483 U.S. 825, 835 n.4 (1987) (the government cannot "single [ ] out 'individuals' to bear the burden of [its] attempt to remedy" public problems).

In today's urbanized society, one of the most essential attributes of sovereignty possessed by the States of Oregon, Washington, and their political subdivisions and one which is constitutionally protected is this hybrid governmental service of land-use planning and control through the states' use of their lands for the benefit of their citizens. That Congress has not previously sought to impose nationwide, uniform and mandatory land use requirements undoubtedly reflects a recognition of the uniqueness of each parcel of land. Land traditionally has been subject to the equity jurisdiction of the courts so as to provide flexibility and avoid the harsh results that might be obtained if considered under rigid rules of law. *IV Pomeroy's Equity Jurisprudence* § 1402 p. 1034, 2 Story, Equity Jurisprudence §§ 829-843, 993.

CONCLUSION

For the foregoing reasons, a *writ* of *certiorari* should issue to review the decision of the Ninth Circuit Court of Appeals. The insidious assault which that decision permits against our constitutionally protected federal form of government must be turned back.

Respectfully submitted,

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